STATE OF MICHIGAN

COURT OF APPEALS

ANDREW F. HENDERSON, Plaintiff-Appellant,	UNPUBLISHED March 8, 2005
v	No. 257009 Alger Circuit Court
JESSICA J. HENDERSON, Defendant-Appellee.	LC No. 99-003319-DM

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court order denying his amended motion for change of custody and make-up parenting time. We affirm.

Plaintiff argues that the trial court erred when it dismissed his motion without making findings of fact as to the best interest factors set forth in MCL 722.23 and the existence of an established custodial environment. We disagree. In custody cases, we review a lower court's discretionary rulings for an abuse of discretion and questions of law for clear legal error. *Fletcher v Fletcher*, 447 Mich 871, 877; 526 NW2d 889 (1994).

MCL 722.27(1)(c) provides that a court may modify or amend its previous judgments or orders only "for proper cause shown or because of change of circumstances . . . ." A party seeking a modification or amendment of a trial court's judgment or order for custody must first prove by a preponderance of the evidence the existence of proper cause or a change of circumstances before the trial court can consider whether an established custodial environment exists and conduct a review of the best interest factors. *Vodvarka v Grasmeyer*, 259 Mich App 499, 509; 675 NW2d 847 (2003). To establish proper cause necessary to revisit a custody order, "a movant must prove by a preponderance of the evidence the existence of an appropriate ground for legal action to be taken by the trial court." *Id*. at 512. To establish a change of circumstances, "a movant must prove that, since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a *significant* effect on the child's well-being, have materially changed." *Id*. at 513 (emphasis in original). Moreover, not just any change will suffice because "over time there will always be some changes in a child's environment, behavior, and well-being." *Id*. Instead, "the evidence must demonstrate something more than the normal life changes (both good and bad) that occur during the life of a child, and there must be at least some evidence that the material changes have had or will almost certainly have an effect on the child." *Id*. at 513-514.

This Court has recognized that, in requiring such proof, the Legislature intended to "'erect a barrier against removal of a child from an established custodial environment and to minimize unwarranted and disruptive changes of custody orders,'" and to provide a stable environment for children that is free of unwarranted custody changes and hearings. *Id*. at 509, 511, quoting *Heid v AAASulewski* (*After Remand*), 209 Mich App 587, 593; 532 NW2d 205 (1995).

Taking into account the Legislature's intent to protect children from unwarranted custody hearings and changes, *Vodvarka*, *supra* at 509, 511, we conclude that plaintiff failed to meet his threshold burden of proving by a preponderance of the evidence that proper cause exists or that conditions have materially changed that have had or could have a significant effect on the parties' children's well-being. *Id.* at 512. Plaintiff presented evidence that an older male cousin may have exposed himself to the parties' minor son while the boy was in the care of defendant's mother. Further, plaintiff's evidence showed that the two boys often played roughly together, that the parties' son slept in defendant's bed, and that on one occasion defendant sent the parties' minor daughter to school wearing ill-fitting adult clothing. Further, plaintiff presented evidence that the parties' son sometimes engaged in sexually inappropriate behavior while in plaintiff's care, that defendant had refused to permit the children to see various counselors selected by plaintiff, and that defendant withdrew the parties' son from kindergarten after the boy had been enrolled by plaintiff.

Conversely, the evidence also established that plaintiff had arranged for each of the counseling appointments in issue without informing defendant that he was going to do so. Moreover, while defendant insisted that the children not see the therapists without her approval or her being present during the appointments, defendant did not refuse entirely to let them attend counseling. The evidence also showed that although defendant was initially upset that plaintiff had taken the parties' son to the police regarding his older cousin's exposing himself to the boy, her anger was based on the fact that she had not been informed that the boy had seen the therapist who had initiated the police investigation by contacting the Family Independence Agency. Despite her anger, however, there was police testimony that defendant cooperated with the investigation. The evidence also established that the preschool teachers of the parties' son had recommended that the boy not attend kindergarten in the fall of 2002 and that defendant had enrolled the boy in a preschool prior to plaintiff enrolling him in kindergarten. As for the parties' son sleeping in defendant's bed, there was evidence that the door to the boy's bedroom lacked an inner doorknob. Accordingly, the trial court was not required to make findings of fact as to the best interest factors or as to the existence of an established custodial environment before ruling on the motion. *Vodvarka*, *supra* at 509.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Peter D. O'Connell